

REMARKS

Claims 1-15 have been examined. Claims 1, 5 and 7 have been rejected under 35 U.S.C. § 112, second paragraph, and claims 1-15 have been rejected under 35 U.S.C. § 103(a).

I. Rejections under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 1, 5 and 7 under 35 U.S.C. § 112, second paragraph. Applicant submits that amended claims 1, 5 and 7 fully comply with the requirements of 35 U.S.C. § 112, second paragraph.

II. Rejections under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-15 under 35 U.S.C. § 103 (a) as allegedly being unpatentable over Martin (US 6,606,607) in view of Harrington (US 6,161,099).

As an initial matter, the current rejections of claims 1-15 are identical, in all respects, to the rejections set forth in the March 18, 2005 Office Action. Such rejections were overcome as evidenced by the subsequent November 16, 2005 Office Action that set forth new grounds of rejection. Since the Examiner of the current Office Action is no longer employed with the USPTO, the undersigned discussed this matter with the Examiner's Supervisor, Mr. Yogish Garg, on June 2, 2006. The Supervisor requested that the Applicant note that the rejections are identical to previously overcome rejections, so that proper action can be taken by a subsequent Examiner. Accordingly, Applicant submits that claims 1-15 are patentable over Martin and Harrington for at least the following reasons.

A. Claim 1

Applicant submits that claim 1 is patentable over the cited references. For example, claim 1 recites:

a supplier terminal which, upon receiving an application for purchasing the product from the user terminal via the Internet, charges a commission fee to the user operating the user terminal, randomly selects a purchase price of the product from a plurality of prices within a predetermined price range, and presents the selected price on the user terminal together with a predetermined term of validity, the predetermined term of validity being the time period during which the product is available for purchase, by the user, at the randomly selected price.

The Examiner asserts that this element is taught by Martin's administrator terminal 14, citing as support column 2, lines 4-34 which is a portion of the specification titled *Objects and Summary of the Invention*. (Office Action at p. 3).

Martin is directed to online commerce in the form of an auction. A bidder, i.e., a buyer at buyer interface 16 enters a bid (col. 3, lines 33-35; col. 4, lines 60-64; col. 5, lines 14-16; Fig. 9A at step 170) and administrator terminal 14 determines if the bid is acceptable based on previously established criteria (col. 5, lines 14-16; col. 6, lines 34-62). Administrator terminal 14 does not, at any point, "randomly selects a purchase price of the product from a plurality of prices within a predetermined price range" as recited in claim 1. Indeed, in Martin, the initial price is a bid from a buyer. (col. 3, lines 33-35; col. 4, lines 60-64; col. 5, lines 14-16; Fig. 9A at step 170).

Administrator terminal 14 then compares this bid to a virtual minimum acceptable price (VMAP) calculated by the administrator terminal. (col. 6, lines 34-63; Fig. 9A at steps 174, 176, 178, 180). The VMAP is determined by multiplying a user-defined minimum acceptable price (MAP) by a "flex rating" corresponding to the administrators permissible price flexibility. *Id.* Thus,

Martin never “randomly selects a purchase price of the product from a plurality of prices within a predetermined price range.” Martin calculates a comparator, not a price at which a product will be sold -- Martin’s selling price is the user’s bid. As Harrington fails to cure this deficiency of Martin, Applicant submits that claim 1 is patentable over Martin in view of Harrington for at least this reason.

Further, claim 1 recites a supplier terminal that “presents the selected price on the user terminal together with a predetermined term of validity, the predetermined term of validity being the time period during which the product is available for purchase, by the user, at the randomly selected price.” The Examiner maintains that the “predetermined time period” discussed in Martin at column 6, lines 20-63 discloses the claimed “predetermined term of validity.” (Office Action at p. 3) However, the “predetermined time period” of Martin is in reference to a time limit set on a bidder for submitting his/her three allowed bids. (col. 6, lines 25-33). In particular, if a bidder has submitted more than three bids during the predetermined time period, the bidder is locked out of the bidding process for the particular product in question. (col. 6, lines 30-34). In the example provided in Martin, the predetermined time period is set at one hour (col. 6, lines 29-30). In response to similar arguments contained in the January 14, 2005 and the June 16, 2005 Amendment, Applicant argues that these arguments are not persuasive:

The Examiner notes, bides are generated at the buyer’s end, or terminal, while offers, counter offers and rejects are generated at a central location where the auction administrator is located. Most current on-line auction systems involve many bidders submitting bids against one another over a specified timer periods for a given item (Martin: column 1, lines 20-36).

(Office Action at p. 6). Applicant submits, however, that the Examiner's arguments are irrelevant and fail to contradict the arguments set forth herein or in the January 14, 2005 Amendment Under 37 C.F.R. § 1.111. Where bids, offers, counter offers or rejections, if any, are generated, is simply unrelated to a supplier terminal that "presents the selected price on the user terminal together with a predetermined term of validity, the predetermined term of validity being the time period during which the product is available for purchase, by the user, at the randomly selected price." Nothing in the Examiner's rebuttal address "predetermined term[s] of validity." Further, what the Examiner asserts is known in "current on-line auction systems" is, again, irrelevant. Users submitting bids against one another over specified time periods does not teach a supplier terminal that "presents the selected price on the user terminal together with a predetermined term of validity, the predetermined term of validity being the time period during which the product is available for purchase, by the user, at the randomly selected price" as recited in claim 1. Accordingly, for at least this additional reason, Applicant submits that claim 1 is patentable over the cited art.

In view of the above, the predetermined time period of Martin is in reference to a process of locking a bidder out of a bidding, based on the number of bids presented by the user. On the contrary, the claimed predetermined term of validity of claim 1 is in regard to a selected price presented by the supplier terminal, and how long that presented price remains valid (i.e., the presented price is sent to the user terminal together with the predetermined term of validity).

Accordingly, Martin fails to teach or suggest the claimed predetermined term of validity. As Harrington fails to cure the deficient teachings of Martin, Applicant submits that claim 1 is

patentable over the cited references, and respectfully requests the Examiner to withdraw the rejection.

B. Claims 5 and 7

Since claims 5 and 7 contain analogous features as recited in claim 1, Applicant submits that such claims are patentable for at least analogous reasons as presented above.

C. Claims 2-4, 6 and 8-15

Since claims 6 and 8-15 are dependent upon one of claims 1, 5 and 7, Applicant submits that such claims are patentable at least by virtue of their dependency.

III. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any

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Respectfully submitted,

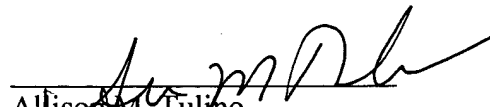
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